

1 There is an outstanding issue, Your Honor, of
2 what their plan is going to entail and whether
3 or not they are going to seek to sell all of
4 their assets and what the value of those
5 assets are, and whether the value of those
6 assets exceeds how much they owe to their
7 creditors.

8 I think we are still waiting for
9 some of that information that Mr. Keller says
10 is something that will be ongoing and part of
11 the reorganization plan, too, at the end of
12 this month to the Bankruptcy Court.

13 So I think that issue is still
14 outstanding as to whether or not they are
15 seeking to put everything at the Second
16 Thursday that may exceed how much they owe
17 their creditors. That was the issue that we
18 talked about the last time.

19 So in terms of whether this is
20 something that is right for Second Thursday,
21 I think there is still some information we
22 need from Mr. Keller.

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1 MR. KELLER: I just wanted to say,
2 when I heard you restate it, I think I might
3 have misled you. It is not that, when we have
4 this hearing on the 2nd that everything will
5 be all wrapped up. This hearing on the 2nd
6 will take care of the rest of the remaining --
7 with a few minor exceptions, of the contracts
8 for sale.

9 There is still the reorganization
10 plan to be gone through with the court as to
11 how -- That just simply says the bankrupt
12 estate can sell these assets. That doesn't
13 get them out of bankruptcy yet or decide how
14 the company is going to be reorganized under
15 the plan.

16 She is right. The reorganization
17 plan will have that, and I am prepared to
18 address some of those issues today.

19 JUDGE SIPPEL: Well, before we get
20 into that, I don't know how deep we want to
21 get into that, but I am going to ask you to
22 give me an overview on that. But my question

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1 then is this: Is the Bureau's position that
2 the final approval of the plan by the
3 Bankruptcy Court is necessary before the issue
4 is ripe to -- and also, of course, the
5 appropriate motions filed with respect to
6 Second Thursday, but basically, the
7 reorganization has to be approved by the
8 Bankruptcy Court before there is even a Second
9 Thursday issue for the WP to consider. Is
10 that basically your position?

11 MS. KANE: I believe that is the
12 appropriate process, Your Honor, but it also
13 would lend some ability for the Bureau to
14 determine whether or not Second Thursday is
15 even applicable. So we would suggest that we
16 would need to see the reorganization plan.
17 Whether or not it has yet been approved by the
18 court, it may not be as much of an issue, but
19 obviously, if it were approved, that would be
20 more helpful to us.

21 JUDGE SIPPEL: Why would you even
22 be interested in it until the court approves

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1 or disapproves it?

2 MS. KANE: I think we would like
3 to be able to know what it is Maritime is
4 intending to do in terms of some sort of
5 reorganization or a dissolution of its assets,
6 how it is intending to dissolve its estate.

7 JUDGE SIPPEL: That will be
8 basically making available for the Bureau
9 responding with the Bankruptcy Court.
10 Correct?

11 MS. KANE: Correct, Your Honor,
12 and that was supposed to be filed next
13 Tuesday, and we are -- either next Tuesday or
14 next Monday. But we are concerned about
15 whether that timing is going to stick.

16 MR. KELLER: Let me first say, I
17 want to take a rare opportunity here, because
18 I don't often have this opportunity, but I
19 want to agree with Ms. Kane that the filing --

20 JUDGE SIPPEL: Pop the champagne.

21 MR. KELLER: The filing, but not
22 necessarily approval by the court of the

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1 reorganization plan, is critical to putting
2 together and presenting the Second Thursday
3 plan. In fact, that is the one thing that is
4 -- You know, I am not willing to present a
5 detailed Second Thursday plan until we have
6 the reorganization plan that includes how we
7 are going to resolve this issue on file.

8 We are committing to get that
9 Second Thursday petition filed as soon as
10 possible after the reorganization plan is
11 filed, not heard by the court but filed with
12 the Bankruptcy Court, and I would say probably
13 within 10 days to two weeks at the most
14 following the filing of that reorganization
15 plan with the Bankruptcy Court, we will be
16 presenting the Second Thursday petition. That
17 is number one.

18 Two other things I want to address
19 is the timing of the reorganization plan and,
20 secondly, the overview of what we believe
21 right now the proposal is going to be, and
22 what I am sure will be, as far as I am going

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1 to get.

2 I am not going to go into some
3 details. So there are some minor details that
4 may change, but the overview will be the same.
5 So let me first address that.

6 What is being proposed is: There
7 is an entity being formed -- it may have
8 already been formed -- by the secured
9 creditors. The secured creditors in this case
10 have formed an entity. That entity is going
11 to do -- and I am not a bankruptcy lawyer --
12 what is called a credit bid.

13 They are going to acquire all of
14 the licensed assets of Maritime, so all of the
15 licensed assets of Maritime, subject to any
16 pending contractual obligations. So that
17 means if, for example, the Metrolink -- Say,
18 if they would still be obligated to go through
19 with that transaction, etcetera -- they will
20 be doing this in exchange for their claims on
21 the estate. In other words, rather than
22 paying cash, they will be basically

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1 liquidating their claims and taking the
2 licensed assets into this entity.

3 So at that point, Maritime as an
4 entity will no longer hold any licensed
5 assets. The only monies that may go to
6 Maritime, and I am not even sure that they
7 would go directly to Maritime or be pursued in
8 some other arrangement, would be such funds as
9 are necessary to pay the unsecured creditors
10 and administrative claims, things like that.

11 So there would be no cash proceeds left
12 in Maritime after this is done. I would also
13 add that, in terms of claims on the estate
14 that would be satisfied in this, these do not
15 include -- would not include the claims of
16 Sandra DePriest, Donald DePriest or Scotland
17 House. In fact, when I prepared my status
18 report, I was working from the schedules that
19 have been filed with the court. There is now
20 an actual claims register, and I would note
21 that those claims aren't even on the register.

22 So that is essentially what the

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1 plan is. The plan is to assign all the
2 license assets out of Maritime into this
3 entity owned by the secured creditors, and
4 then the only proceeds that would affect
5 Maritime at all would be to pay its unsecured
6 creditors and administrative claims.

7 JUDGE SIPPEL: Does the Commission
8 have to approve that?

9 MR. KELLER: Yes. Yes, but for
10 that part we will need Bankruptcy Court
11 approval. You know, we will need Bankruptcy
12 Court approval for that transaction, and then
13 we would come to the Commission; but what I
14 anticipate that that would look like is, first
15 of all, there would certainly be an
16 application for the Commission to assign the
17 licenses from the DIP, the debtor in
18 possession, to this entity.

19 There may or may not be some two-
20 step stages involved then to get the other
21 pending contracts taken care of, or whether
22 they could be handled laterally, I don't know.

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1 But those are minor. But, yes, the Commission
2 would ultimately have to approve this, but
3 that would be part of the Second Thursday
4 plan, would be presenting the overall picture
5 saying, here is the plan, here is how we are
6 moving forward; we want you, pursuant to
7 Second Thursday, to approve this, including
8 consenting to the applications that are
9 necessary to implement this.

10 JUDGE SIPPEL: How does that sound
11 to you, Ms. Kane?

12 MS. KANE: It raises a few
13 questions for us, Your Honor. First and
14 foremost, if there has been an evaluation of
15 the license inspector and beyond those covered
16 by the assumed contracts -- in other words,
17 what is the value of assets that is being
18 transferred to this secured creditor group.
19 That is number one.

20 Number two, who are the secured
21 creditor group, and what is the value of the
22 claim for the secured creditors? Mr. Keller

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1 has identified the secured claims as only \$18
2 million. I think, as we have talked before,
3 the value of this license in this spectrum has
4 been valued by them to the Bankruptcy Court at
5 \$45 million.

6 If these creditors are assuming a
7 value of spectrum that is far beyond what they
8 are owed, that may cause an issue under Second
9 Thursday, Your Honor.

10 MR. HAVENS: This is Warren
11 Havens. May I just state that in the upcoming
12 -- I'm sorry.

13 JUDGE SIPPEL: Mr. Keller, I am
14 thrown off track here a little bit now. The
15 way you were saying it, I kind of thought it
16 was a wash, but it really is -- there is going
17 to be a difference -- Obviously, from what Ms.
18 Kane has said, there is going to be a sort of
19 a leftover slush fund or however you want to
20 characterize it.

21 MR. KELLER: No, there won't be
22 any leftover slush fund, because, as I said,

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1 the only cash that will come out of this would
2 be, pursuant to this deal, they are canceling
3 their debts. They are also putting up the
4 cash necessary to pay the unsecured creditors
5 and administrative claims.

6 There is no extra cash going to be
7 left in Maritime as a result of this. What
8 Ms. Kane is referring to --

9 JUDGE SIPPEL: Well, in terms of
10 Maritime, but there is money -- There is a
11 value to all those licenses --

12 MR. KELLER: Right.

13 JUDGE SIPPEL: -- that are going
14 to be assigned to this Secured Creditors, Inc.
15 or whatever it is called, and that value is
16 going to exceed -- correct me if I am not
17 saying this right. It is going to exceed the
18 amount of indebtedness of -- Yes, it is going
19 to exceed the amount of indebtedness of
20 Maritime. So that is going to be -- and then
21 what happens? If that's the case, what
22 happens to that value?

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1 MR. KELLER: First of all, I take
2 issue with the fact that that is the case.
3 That is a speculation. Mr. Rupke's license is
4 revoked. Under these circumstances and all
5 that, there is no way they are worth \$45
6 million, but whatever they are worth, I --

7 MR. HAVENS: I would like to make
8 a relevant point, please.

9 JUDGE SIPPEL: Now you can't
10 interrupt. We will get to you, Mr. Havens,
11 but not right now. Let him finish. Let him
12 finish.

13 MR. KELLER: So I would say the
14 question of the precise value of the assets is
15 a question of fact, and I don't think it has
16 been established. So we just can't throw
17 around a number like \$45 million and assume,
18 ha, ha, that's it.

19 Secondly, I would argue that --
20 and this is a matter that will be fallout in
21 pleadings before the Commission and addressing
22 Second Thursday, I am sure, but I would argue

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1 that the value -- the excess value, if any, is
2 not relevant so long as who is taking that
3 excess value is not the alleged wrongdoers.

4 The idea is -- Let's assume, for
5 the sake of argument, that this secured
6 creditors' committee would now have license
7 assets that -- The amount of claims that they
8 cancel plus the amount of cash that they put
9 up to satisfy unsecured creditors' claims and
10 administrative expenses: Let's assume that,
11 when you add those together, there is still
12 some added alleged value to the licenses.

13 Even so, that value is not going
14 to the alleged wrongdoers. It is going to the
15 secured creditors, number one. Number two,
16 remember, the whole point of Second Thursday
17 is to satisfy the claims of creditors and
18 support the bankruptcy laws.

19 The alternative is that no
20 creditor gets anything. You know, the
21 alternative is we come back here. We have a
22 license, and we risk the possibility that all

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1 the licenses get revoked, and then no creditor
2 gets anything. But as I say, the question of
3 whether or not there is an excess value and
4 whether or not that is legally relevant under
5 Second Thursday is a question to be briefed
6 and argued in the context of the Second
7 Thursday petition, in my opinion.

8 JUDGE SIPPEL: All right. I am
9 trying to get a feel for how much work has to
10 be done before this case can move along, and
11 it seems to me, there is a lot of work that
12 has got to be done.

13 MS. KANE: Your Honor, we would
14 argue that the question of fact as to the
15 value of the licenses is a question for this
16 forum, because it will determine whether or
17 not Second Thursday is even an appropriate
18 measure to move forward and, therefore,
19 whether this hearing should be stayed with
20 regard to Mr. Keller's and Maritime's motion
21 to set.

22 If Second Thursday is not an

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1 option, this hearing should proceed on all
2 issues.

3 MR. HAVENS: Your Honor, could I
4 make one point?

5 JUDGE SIPPEL: I am on a rather
6 significant issue here, Mr. Havens. I don't
7 mean to cut you off. We will get back to you.

8 MR. HAVENS: But it is on exactly
9 the point of value. There is experts who are
10 testifying to that and --

11 JUDGE SIPPEL: I don't want to get
12 into the facts of the value. I am just
13 looking for issues right now, and there is an
14 item outstanding from the Bureau that Mr.
15 Keller has to address. So just stay quiet a
16 while. Go ahead, Mr. Keller.

17 MR. KELLER: I again dispute the
18 issue that the value of the licenses in this
19 context, under the scenario that I have laid
20 out, is relevant to Second Thursday. I mean,
21 the fact that there is some excess value -- it
22 doesn't really matter.

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1 It would matter if the licenses
2 were being sold for cash and that cash was
3 going to stay in Maritime and then possibly,
4 therefore, go to the alleged wrongdoers, but
5 that is not the scenario that has been laid
6 out.

7 The scenario that is laid out is
8 that no cash will go to Maritime or, if it
9 does, it is solely cash to pay unsecured
10 creditors and administrative claims. There
11 will be no excess cash money or any value --
12 Proceeds of the license assets will not remain
13 with Maritime, period.

14 Now the fact that those license
15 assets, are the license assets potentially
16 worth more than the -- A little. I presume
17 there is a business judgment here that the
18 secured creditors have to make, and maybe that
19 is a risk that they take in exchange for
20 canceling their debts.

21 JUDGE SIPPEL: Counsel for
22 Pinnacle?

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1 MR. CATALANO: For DEMCO, Your
2 Honor.

3 JUDGE SIPPEL: I'm sorry.

4 MR. CATALANO: We participated in
5 the bankruptcy proceeding on the assumption of
6 the DEMCO contract, and in the context of the
7 DEMCO contract, the court addressed valuation
8 for not only DEMCO but for all the contracts
9 that were assumed.

10 The court found fair value, good
11 faith transactions. In the court's opinion
12 from the bench, the court expressed skepticism
13 regarding the prior valuation of the 45
14 million. In the bankruptcy proceeding as it
15 goes forward, the court will be addressing the
16 valuation issue, and any Second Thursday
17 showing would have the benefit of what is
18 decided on the valuation issue in the
19 bankruptcy proceeding, and that is an issue
20 that is directly in front of the bankruptcy
21 proceeding, the valuation of those assets.

22 So the Commission would have the

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1 benefit of the court's finding in that
2 proceeding, but should not independently take
3 off on a separate track to address valuation.

4 JUDGE SIPPEL: Are you saying or
5 is it implied from what you are saying that it
6 is going to be -- it is, in effect, res
7 judicata that the Commission has no business
8 getting into that?

9 MR. CATALANO: That issue of
10 valuation has not been designated in this
11 proceeding, and the issue of valuation is the
12 very issue that the bankruptcy court
13 determines in making its decisions on the
14 liquidation of the estate.

15 That is within the jurisdiction of
16 the bankruptcy court, and that is what the
17 bankruptcy court is already in the process of
18 doing, has done so on the contracts that it
19 has addressed, will do so on the additional
20 contracts on February 2nd and, finally, in
21 addressing the bankruptcy plan of
22 reorganization, will be addressing the final

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1 valuation.

2 At that point, that record can go
3 to the Commission under a Second Thursday
4 showing, and the Commission will have the
5 benefit of the findings of the court, the
6 bankruptcy court, which is empowered to
7 address those very issues. That is the
8 purpose of the bankruptcy court.

9 JUDGE SIPPEL: I understand --
10 Well, you are giving me a good explanation,
11 and it is very appropriate. But I am of the -
12 - Well, I am not going to say where I am
13 coming out on this, but I think that the
14 Bureau and Ms. Kane is of the view that, once
15 -- and I am not trying to put words in your
16 mouth, please. But once all that is done --
17 that is, the valuation is done and the
18 bankruptcy court basically has a final ruling
19 on what they find the value to be these issues
20 are all -- at least, they have resolved them
21 to the court's satisfaction, then it comes to
22 the Commission.

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1 I think that the Bureau would have
2 it come to me so that they could make their
3 comment, objections or what-not on the
4 accuracy of some of those figures. They are
5 not satisfied, because it is the good faith --
6 The issue with me would be does this qualify?
7 In other words, does this qualify for Second
8 Thursday in the generic, not necessarily in a
9 point by point, but if there is reason to
10 believe that the Second Thursday is being used
11 as a device to get the case out of here, to
12 get a case away from me -- I don't want to
13 even suggest accusations, but if there is a
14 significant difference between what the Bureau
15 finds to be the true value and the value
16 determined by the bankruptcy court because
17 they can -- The bankruptcy court is going to
18 consider whatever it is going to consider.

19 Let me rephrase it this way. It's
20 the question of the good faith application of
21 the principle of the Second Thursday doctrine.
22 If I am satisfied that this is all done in

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1 good faith, then bang, it goes up to WB.

2 Now is my understanding correct?

3 MS. KANE: That would be our
4 concern, Your Honor. I think you phrased it
5 very accurately, which is that, depending on
6 how that valuation falls out, Second Thursday
7 is only designed to transfer licenses in an
8 effort to satisfy the creditors.

9 If they are getting more value
10 than what they are owed, then Second Thursday
11 may not apply and may not provide any basis to
12 hold up this hearing on the remaining issues.

13 So our concern, obviously, is to
14 get that information as quickly as possible.
15 We thought we were expecting a reorganization
16 plan with this detail outlined next week, but
17 now I still haven't heard from Mr. Keller when
18 that is going to be filed.

19 JUDGE SIPPEL: Can you give us --
20 I'm sorry, yes, sir? Could I have your name?

21 MR. CATALANO: Al Catalano,
22 counsel for DEMCO.

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1 JUDGE SIPPEL: Mr. Catalano.

2 MR. CATALANO: The only point I
3 would make on the valuation issue is the
4 Commission has, and the Bureau has, the
5 opportunity to participate in the bankruptcy
6 on the valuation issue, and that is the very
7 issue that is before the court in that
8 proceeding.

9 JUDGE SIPPEL: I've never heard of
10 that. The Commission -- Has the commission
11 ever participated in a bankruptcy proceeding?

12 MR. CATALANO: They have a right
13 as a party to enter, Your Honor.

14 JUDGE SIPPEL: As a party?

15 MR. CATALANO: Or through the
16 Justice Department. They certainly have an
17 opportunity to address the valuation issue in
18 that proceeding.

19 JUDGE SIPPEL: It sounds like the
20 President is going to have all the attorneys
21 in the government running around looking for
22 fraud. I just think that is carrying it a

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1 little further than it is intended to go, but
2 I don't really have the answer for you either.
3 But I think I understand -- I understand where
4 the Bureau is coming from, and I am inclined
5 to be of the same mind, that I want to see --
6 I want the Bureau to have the opportunity to
7 examine this plan that the court is going to
8 approve or has approved before I send it out
9 of here up to WB, and I tell WB it looks like
10 -- is this qualified for Second Thursday? You
11 know, you make the determination, and you are
12 sort of nodding. I don't know if you are
13 approving that, but you understand that.

14 MR. CATALANO: I understand your
15 point, Your Honor.

16 JUDGE SIPPEL: I am not trying to
17 be an intermediary. I am not trying to slow
18 the process down, but on the other hand --
19 Well, on the other hand, I have said as much
20 as I can possibly say on this right now.

21 So having said all that, Mr.
22 Miller?

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1 MR. KELLER: Keller.

2 JUDGE SIPPEL: Keller, I'm sorry.

3 MR. KELLER: I think Mr. Miller is
4 on the phone.

5 JUDGE SIPPEL: Mr. Miller, I can't
6 keep you out of my mind.

7 MR. MILLER: I appreciate that,
8 Your Honor.

9 JUDGE SIPPEL: And I haven't
10 forgotten you either, Mr. Havens. Can you
11 give us a date or approximate date or a week?

12 MR. KELLER: Before that, let me
13 just say one thing.

14 JUDGE SIPPEL: On the
15 reorganization.

16 MR. KELLER: That was one of the
17 two things I was going to address.

18 JUDGE SIPPEL: Right.

19 MR. KELLER: You have said a
20 couple of times WB, and that is fine, but I
21 think, actually, this will have to go to the
22 Commission, because this will involve --

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1 Because it is a Commission level designation
2 order, I am not sure that the Wireless Bureau
3 has delegated authority to address it, but
4 that is a minor point. Whatever it is, it is.

5 JUDGE SIPPEL: I want to send it
6 to the right address.

7 MR. KELLER: I think it is to the
8 Commission unless the Commission acts to
9 somehow delegate authority to the Wireless
10 Bureau to act in this particular matter.

11 JUDGE SIPPEL: Well, we will get
12 to that.

13 MR. KELLER: So we will get to
14 that.

15 Until yesterday -- Until yesterday
16 at about 7:30 p.m., I fully anticipated coming
17 in here and saying that the reorganization
18 plan is going to be filed on Monday and that
19 we would be filing our Second Thursday showing
20 within a week to two weeks after that.

21 I got word from Bankruptcy counsel
22 last evening that he had just received a

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1 letter from the unsecured creditors committee
2 and that he was momentarily expecting a
3 similar letter from the secured creditors
4 group urging him to seek an extension of time
5 to file the reorganization plan.

6 The contours that I laid out of
7 this plan whereby the secured creditors are
8 going to take the assets, etcetera --
9 apparently, everybody is on board with that
10 between these various creditors. There are
11 some issues, as I understand, on the fine
12 points of it.

13 I think it largely has to do with
14 whose claims have what priority in terms of
15 how the money gets distributed, etcetera,
16 because again the secured creditors are also
17 putting up some cash to take care of the
18 claims and the expenses.

19 So they urged him to seek an
20 extension of 30 days to file the report. He
21 said he feels like he has to honor that
22 request, but we anticipate -- that group would

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